S.B.Civil Second Appeal No.130/1981.

Madan Lal.

vs.

Mahant Radha Krishna Das

Date : 2.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.DR Bhandari, for the appellant.
Mr.Arun Bhansali, for the respondent.

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Learned counsel for the appellant submitted that the appellant's second appeal was dismissed by order dated 16.2.1999 as abated. According to learned counsel for the appellant, the appeal was rightly dismissed as abated.

Yet the appellant has submitted an application under Order 22 Rule 4 read with Order 22 Rule 9 CPC on 25.10.2005 for getting aside the abatement of appeal that too after more than 6 years after dismissal of second appeal.

Learned counsel for the appellant submits that the said application has been filed merely because in SB Civil Revision Petition No.495/2000, this Court vide order dated 26.9.2005 while dismissing the revision

petition of the appellant, granted liberty to the petitioner to move application for setting aside the abatement in the present second appeal within a period of one month from the date of the order passed in the revision petition. According to learned counsel for the appellant, the order of dismissal of appeal as abated was legal and was rightly passed and the present application has been filed only because of the observation of this Court made in the revision petition.

It is clear from the order dated 26.9.2005 passed in the aforesaid revision petition that this court only observed that if the petitioner therein is advised and if he chooses to move an application for setting aside of abatement in second appeal, then he may move application.

When the appellant himself is of the view that the abatement of the second appeal was right as well as legal, then there existed no reason for his moving the application for setting aside of the abatement only because this Court in revision petition itself observed that in case, the petitioner wants to move, then he can move the application. When the appellant himself says that the said order was rightly passed, then in fact, no occasion arose to the petitioner even in pursuance

of the order of this Court dated 26.9.2005 to move the application.

In view of the above reasons, the application filed by the appellant under Order 22 Rule 4 read with Order 22 Rule 9 CPC is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya